

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TOMAS L. MENEWEATHER,

No. C 07-04204 SBA (PR)

Plaintiff,

**ORDER DENYING MOTION FOR  
DEFAULT JUDGMENT**

v.

B. POWELL, et al.,

Defendants.

Plaintiff, a state prisoner, has filed a pro se complaint under 42 U.S.C. § 1983. On December 23, 2008, Plaintiff filed a motion for default judgment.

Under Rule 55 of the Federal Rules of Civil Procedure, judgment by default may be entered "[w]hen a party against whom affirmative relief is sought has failed to plead or otherwise defend as provided by these rules." Fed. R. Civ. P. 55(a). On the date Plaintiff filed his motion for default judgment, the complaint had not been served on Defendants. At that time, Defendants had not failed to defend this action.<sup>1</sup> Therefore, the facts alleged by Plaintiff in his motion do not entitle him to an entry of default against them.

Accordingly, Plaintiff's request for default judgment is DENIED.

This Order terminates Docket no. 14.

IT IS SO ORDERED.

DATED: 2/11/09

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

<sup>1</sup> The complaint has since been served on Defendants, and they filed their answer on January 12, 2009.

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 TOMAS L MENEWEATHER,

5 Plaintiff,

6 v.

7 B POWELL et al,

8 Defendant.

Case Number: CV07-04204 SBA

**CERTIFICATE OF SERVICE**

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
10 Court, Northern District of California.

11 That on February 12, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
14 located in the Clerk's office.

15 Tomas Lopez Meneweather D35219  
16 Salinas Valley State Prison  
17 P.O. Box 1050  
18 Soledad, CA 93960

19 Dated: February 12, 2009

Richard W. Wieking, Clerk  
By: LISA R CLARK, Deputy Clerk

United States District Court  
For the Northern District of California